IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

APPELLANT (DEFENDANT):

State of Rajasthan

VERSUS

RESPONDENT (PLAINTIFF):

M/s Ramswaroop Peeru Ram,
dissolved partnership Firm at Suratgarh.

S.B.Civil Regular First Appeal No.38/1989
against the order dt.26.5.1988 passed by
the Addl. District Judge No.2, Hanumangarh,
in Civil Original Case No.24/82.

Date of Judgment: May 14, 2007

P R E S E N T

HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.V.R.Mehta, Additional Government Advocate.
None present, for the respondent.

BY THE COURT:

This is an appeal against the judgment and decree dated 26.5.1988 passed by the learned Additional District Judge No.2, Hanumangarh in the Civil Original Suit No.24/1982 M/s

Ramswaroop Peeru Ram vs. State of Rajasthan, whereby the suit of respondent-plaintiff was partly decreed for a sum of Rs.6573/- with interest at the rate of 12% per annum. The respondent-plaintiff instituted a suit against the appellant-defendant for recovery of Rs.23,768 in which it was pleaded that the respondent-plaintiff is a partnership Firm and doing contract business. The respondent-plaintiff took lining work on contract relating to Rajasthan Main Canal Burji No.10072500 to 1007500. The work was to be started from 1.5.1966 and to be completed till 30.9.1967. The respondent-plaintiff completed its work on 16.5.1967 but completion certificate was not issued to him. As per the measurement book, a sum of Rs.12,825/- was shown to be due in the name of respondent-plaintiff on 16.5.1967 but this amount alongwith the difference of double tiles measuring 29770 sq. ft. which was shown less amounting to Rs.3904/-, was not included in it. Further, the security amount of Rs.6573/- was also wrongly deducted in the invoice. Thus, a sum of Rs.23,302/- was due from the defendant-State and by calculating interest at the rate of 12% per annum from the date of issuing notice, a sum of Rs.466/- was also due. Hence, the total suit amount was Rs.23,768/-.

In written statement, it was replied by the appellant-defendant that the respondent-plaintiff had to complete his work

on 30.9.1967 but he left the work on 13.4.1967 without giving notice to the appellant-defendant, therefore, the work certificate was not issued to him. It is also stated in the written statement that the respondent-plaintiff did not return the balance tiles and also empty cement bags. Hence, a penalty of 5% was imposed on the respondent-plaintiff and, consequently, a demand of Rs.27841.08p. was made and by deducting the amount payable to the respondent-plaintiff and also the security amount, a balance of Rs.8442.85p. was due from the respondent-plaintiff, for which a counter claim has been filed. Upon pleadings of the parties, the learned trial Judge framed nine issues and after recording the statement of Peeru Ram (PW 1) and Jot Ram Executive Engineer (DW 1) & S.C.Jain Assistant engineer (DW 2), decreed the suit as above.

Since nobody has appeared on behalf of the respondent-plaintiff, therefore, learned Additional G.A. on behalf of the appellant-defendant has argued that while deciding issue No.6 when the learned trial Judge came to the conclusion that the suit is time barred, there was no reason to decree the suit for Rs.6,573/- alongwith interest at the rate of 6% per annum, which is a security amount and if this amount has been decreed then the learned trial Judge should have accepted the counter claim of the appellant-defendant and ought to have allowed the

counter claim of the appellant-defendant for a sum of Rs.8442.85p. alongwith cost and interest. The finding arrived-at by the learned trial Judge according to the learned Additional G.A. is perverse and contrary to the record of the case.

So far as the limitation is concerned, it is true from the evidence of the parties that the final bill was prepared on 30.6.1967 and the suit has been filed in the year 1980 i.e. after thirteen years. If this period is counted from the date of the letter given by the respondent-plaintiff for referring the matter to the arbitration which is of 1972, even then the suit has been filed after eight years, therefore, the suit is expressly barred by law of Limitation. As regards the amount of work undertaken under the contract, a counter claim has also been filed against the same and that too, is also barred by the law of Limitation because when the suit amount is barred which is based on contractual work, then any counter claim arising out of the same cannot be treated to be within the time of limitation. Accordingly, the contractual amount regarding shortage in tiles, empty cement bags etc. and consequently, the counter claim in pursuance to non-return of those empty cement bags and excess consumption of the tiles claimed under the counter claim is also barred by the law of Limitation.

Now, the only point for consideration is whether the security amount of Rs.6,573/- claimed by the respondent-plaintiff is within limitation or not. In this regard, it is an admitted position that this amount was deposited with the appellant-defendant by the respondent-plaintiff at the time of making agreement but it was not returned after giving notice on 7.12.1979, which is Ex.3.

In the impugned judgment, the learned trial Judge while relying upon the decision of this court in State of Rajasthan vs. M/s Sharma and Co., Ganganagar reported in 1977 WLN (UC) 225 held that in a suit for return of security deposit, limitation starts from the date of repudiation of claim. In this case, there was also no issue regarding limitation and the learned Single Judge held that the claim of plaintiff was repudiated on 4.5.64 and the suit was filed on 31.10.66. In another case of Jadavendra Narayan Choudhury vs. State of West Bengal reported in AIR 1985 Cal.215, it has been held that under Section 70 of the Contract Act, when there is no valid contract as required by Article 299 of the Constitution, the plaintiff's right to sue accrues when the defendant refuses to pay the price or compensation for the loss caused. In my view, both these pronouncements are on different footing because there is an issue regarding limitation in this case and a valid agreement was

also entered into between the parties, which is Ex.2. Under Clause 3 of this agreement, the security can be forfeited, if the contract has been rescinded or under Clause 19, the security can be forfeited for subletting, bribing or if contractor becomes insolvent. Here, in the present case, neither Clause 3 nor Clause 19 are applicable because there is no notice to the contractor from the appellant-defendant regarding forfeiture of the security deposit and when there is no notice then under Article 22 of the Schedule attached with the Indian Limitation Act, 1963, the permit of limitation shall be from the date when the demand is made for money deposited under the agreement. In this case, admittedly, the money was deposited under the agreement Ex.2 and the same has not been returned on demand made vide notice dated 7.12.79 Ex.3, therefore, on this count, the finding of learned Additional District Judge for decreeing the suit for security deposit of Rs.6573/- with interest at the rate of 6% per annum from the date of filing of the suit till the date of realization needs no interference.

Consequently, the judgment and decree dated 26.5.1988 passed by the learned Additional District Judge No.2, Hanumangarh, stands confirmed and the appeal is dismissed along with cross objections. Since nobody has appeared on

behalf of the respondent-plaintiff, there will be no order as to costs.

(DEO NARAYAN THANVI), J.

RANKAWAT JK, PS